

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RYAN WILLIAMS,
Plaintiff,
vs.
ALLEGIANT AIR,
Defendant.

Case No. 2:19-cv-00276-JAD-VCF

REPORT AND RECOMMENDATION

AMENDED COMPLAINT [EFC No. 5]

Before the Court is Plaintiff Ryan Williams' amended complaint. (ECF No. 5). For the reasons stated below, the Court recommends that Williams' claim for wrongful termination in violation of public policy be dismissed with prejudice, and the remainder of the case proceed in the normal course.

BACKGROUND

The Court previously granted Williams' application to proceed *in forma pauperis* and dismissed her complaint without prejudice. (ECF No. 3). The Court held that she did "not state that she timely filed a charge with the EEOC or a state agency and received a notice of right to sue...Therefore, it is not apparent that the Court has jurisdiction over Williams' discrimination claims" under Title VII or various Nevada statutes. (*Id.* at 2).

Williams' amended complaint¹ brings claims for (1) sex discrimination and harassment under Title VII and NRS § 613.330, (2) retaliation under Title VII, (3) wrongful termination, (4) negligent hiring, training, and suspension, (5) intentional infliction of emotional distress, and (6) negligent infliction of

¹ The amended complaint also mentions that Williams has been receiving unemployment benefits are her only means of income. (ECF No. 5 at 1). The Court finds that Williams' unemployment benefits are not sufficient to change the Court's ruling on Williams' application to proceed *in forma pauperis*.

1 emotional distress against Defendant Allegiant Air. (ECF No. 5 at 12-15). Williams alleges that she was
2 repeatedly harassed by other employees, and that she was terminated in retaliation for reporting the
3 harassment. (*Id.* at 2). Williams alleges that a senior-level executive made “aggressive unsolicited
4 comments to [her] in regards to her body, type, health, and eating habits” and stated that she needed to be
5 supervised by a man to work well. (*Id.* at 4-8). Williams also alleges that other employees made her feel
6 objectified by the way they interacted with her. (*Id.* at 9-10). Williams was terminated after a negative
7 interaction with one of these employees and after she reported the other employees’ behavior. (*Id.* at 10-
8 12). Williams states that she timely filed her original complaint after receiving a right to sue notice from
9 the EEOC. (*Id.* at 1).

10 ANALYSIS

11 Because the Court granted Williams’ application to proceed *in forma pauperis*, the Court must
12 review her complaint to determine whether the complaint is frivolous, malicious, or fails to state a
13 plausible claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a) provides that a
14 complaint “that states a claim for relief must contain...a short and plain statement of the claim showing
15 that the pleader is entitled to relief.” Courts must liberally construe pleadings drafted by pro se litigants.
16 *Resnick v. Warden Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (citing *Balistreri v. Pacifica Police Dep’t*,
17 901 F.2d 696, 699 (9th Cir. 1988)).

18 “[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex
19 has created a hostile or abusive work environment.” *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66
20 (1986). Under NRS § 613.330(1), “it is an unlawful employment practice for an employer...[to]
21 discriminate against any person with respect to the person’s compensation, terms, conditions or privileges
22 of employment, because of his or her...sex.” “For sexual harassment to be actionable, it must be
23 sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive
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1 working environment.” *Meritor*, 477 U.S. at 67 (internal quotation omitted). Williams alleges: (1) several
2 coworkers treated her unfairly and objectified her because of her sex, leading to a hostile work
3 environment that impacted her ability to do her job (ECF No. 5 at 4-10), and (2) Allegiant Air did not take
4 action to stop this behavior, despite Williams’ reports (*Id.* at 4-12). Read liberally, Plaintiff states a
5 colorable claim for sexual discrimination and harassment under Title VII and NRS § 613.330.

6 “The elements of a prima facie retaliation claim are, (1) the employee engaged in a protected
7 activity, (2) she suffered an adverse employment action, and (3) there was a causal link between the
8 protected activity and the adverse employment action.” *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1093-
9 94 (9th Cir. 2008). “Protected activity includes...providing testimony regarding an employer's alleged
10 unlawful practices, as well as engaging in other activity intended to “oppose[]” an employer's
11 discriminatory practices.” *Raad v. Fairbanks N. Star Borough Sch. Dist.*, 323 F.3d 1185, 1197 (9th Cir.
12 2003), opinion amended on denial of reh'g, No. 00-35999, 2003 WL 21027351 (9th Cir. May 8, 2003).
13 Plaintiff alleges that she reported the discriminatory and harassing behavior of employees, including a
14 senior-level executive, to management and that she was shortly thereafter terminated. (ECF No. 5 at 4-
15 12). Read liberally, Plaintiff states a colorable claim for retaliation under Title VII.

16 “An employer commits a wrongful termination (primarily known in Nevada jurisprudence as
17 tortious discharge) ‘by terminating an employee for reasons [that] violate public policy.’” *Sanders v.*
18 *Sodexo, Inc.*, No. 2:15-cv-00371-JAD-GWF, 2015 WL 4477697, at *3 (D. Nev. July 20, 2015) (quoting
19 *D'Angelo v. Gardner*, 819 P.2d 206, 212 (Nev.1991)). However, “Nevada law bars a claim for wrongful
20 termination ‘when a plaintiff has an adequate, comprehensive, statutory remedy.’” *Id.* (quoting *Ozawa v.*
21 *Vision Airlines, Inc.*, 216 P.3d 788, 791 (Nev.2009)). In this case, Williams’ wrongful termination claim
22 arises from the same facts that she bases her Title VII claims on—Williams asserts that Allegiant Air
23 “violated a public policy of the State of Nevada against retaliation for reporting or complaining about
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1 harassment and/or discrimination.” (ECF No. 5 at 13). Title VII provides an adequate statutory remedy
2 for Williams’ alleged injury. Therefore, Williams’ wrongful termination claim should be dismissed with
3 prejudice.

4 A claim for negligent hiring, retention, or supervision requires a showing that “(1) defendant owed
5 a duty of care to the plaintiff; (2) defendant breached that duty by hiring, retaining, and/or supervising an
6 employee even though defendant knew, or should have known, of the employee's dangerous propensities;
7 (3) the breach was the cause of plaintiff's injuries; and (4) damages.” *Peterson v. Miranda*, 991 F. Supp.
8 2d 1109, 1118 (D. Nev.), *on reconsideration in part*, 57 F. Supp. 3d 1271 (D. Nev. 2014) (quoting *Hall*
9 *v. SSF, Inc.*, 112 Nev. 1384, 930 P.2d 94, 99 (1996)). Williams asserts that Allegiant Air was negligent
10 in supervising its employees to ensure that discrimination and harassment did not take place or was at
11 least corrected once reported. (ECF No. 5 at 14). Williams alleges that several employees (1) engaged in
12 harassment or discrimination, (2) viewed the discrimination and harassment without taking steps to correct
13 it, and (3) did not respond to Williams’ complaints of discrimination and harassment. (*Id.* at 4-12). Read
14 liberally, Plaintiff states a colorable claim for negligent hiring, retention, or supervision
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16 “To state a claim for intentional infliction of emotional distress under Nevada law, a plaintiff must
17 allege ‘(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing
18 emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and (3) actual
19 or proximate causation.’” *Tarr v. Narconon Fresh Start*, 72 F. Supp. 3d 1138, 1142 (D. Nev. 2014)
20 (quoting *Welder v. Univ. of S. Nevada*, 833 F.Supp.2d 1240, 1245 (D.Nev.2011)). “A claim for negligent
21 infliction of emotional distress for harm inflicted directly upon the plaintiff is only available where the
22 plaintiff has asserted a negligence claim that includes emotional distress as an element of the damages
23 suffered.” *Ferm v. McCarty*, No. 2:12-cv-00782-RFB-PAL, 2014 WL 6983234, at *7 (D. Nev. Dec. 9,
24 2014). Williams alleges that, based on Allegiant Air’s conduct, she has been diagnosed with “High Stress
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1 with enlarged blood cells” and has suffered migraines, “depression, anxiety, stress, sleeplessness, loss of
2 appetite, humiliation, [] embarrassment,” “extreme emotional distress, [and] indignity.” (ECF No. 5 at 9,
3 15). Read liberally, Plaintiff states colorable claims for intentional and negligent infliction of emotional
4 distress.

5 ACCORDINGLY, and for good cause shown,

6 IT IS RECOMMENDED that Williams’ claim for wrongful termination be DISMISSED WITH
7 PREJUDICE.

8 IT IS FURTHER RECOMMENDED that the Clerk of Court issue Summons to the Defendant in
9 this case so the remaining claims may proceed and that the Clerk of the Court mail a copy of the *pro se*
10 packet to Williams.

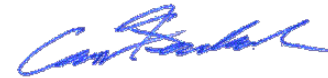
11 **NOTICE**

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13 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
14 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
15 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
16 may determine that an appeal has been waived due to the failure to file objections within the specified
17 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections
18 within the specified time and (2) failure to properly address and brief the objectionable issues waives the
19 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.
20 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,
21 454 (9th Cir. 1983).

1 Pursuant to LR IA 3-1, the Plaintiff must immediately file written notification with the court of
2 any change of address. The notification must include proof of service upon each opposing party of the
3 party's attorney. Failure to comply with this Rule may result in dismissal of the action.

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5 IT IS SO RECOMMENDED.

6 DATED this 5th day of April, 2019.

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CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE